IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77-5898

MAURICE PROCTOR,

Petitioner

v.

WARDEN, MARYLAND PENITENTIARY,

Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of March, 1978, I served a copy of the Brief in Opposition to Petition for Writ of Certiorari in the above case, by depositing same in the United States mail, postage prepaid, to the Petitioner, Maurice Proctor, #26780, Maryland Penitentiary, 954 Forrest Street, Baltimore, Maryland 21202.

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PRELIMINARY COMMENTS

This brief, in opposition to the Petition for a writ of certiorari is filed pursuant to the request of this Honorable Court.

OPINION BELOW

The United States Court of Appeals for the Fourth Circuit dismissed the Petitioner's appeal in an unpublished decision decided August 11, 1977, No. 76-8315.

JURISDICTION OF THE COURT

The Respondent, Warden of the Maryland Penitentiary, admits that this Honorable Court has jurisdiction over the issues raised by the Petitioner as to whether or not his guilty

plea was given freely, voluntarily and intelligently, and incompetency of counsel to the effect that he was not informed of his Fifth and Sixth Amendment rights, and that his attorney generally failed to act in his "best interest". In view of the fact that the Petitioner alleges that his attorney failed to inform him of his right to appeal the original conviction, it should be noted that this issue has not been previously raised in the Maryland courts. The Petitioner has failed to exhaust his state remedies as to this issue and, therefore, it should not be considered by this Honorable Court. The Petitioner also raises the issues of a speedy trial and an illegal search of his residence. Assuming that his plea of guilty was freely given, voluntary and intelligently made, the Petitioner may not raise independent claims relating to deprivation of constitutional rights that occurred prior to his entry of his plea of guilty and, as a consequence, these two issues should not be before this court at the present time.

QUESTIONS PRESENTED

I. Was the Petitioner's guilty plea given freely, voluntarily and intelligently?

II. Was the Petitioner's counsel incompetent because he failed to inform the Petitioner of his rights under the Fifth and Sixth Amendments?

STATEMENT OF THE CASE

On January 8, 1971, the Baltimore City Grand Jury indicted the Petitioner, Maurice Proctor, charging him with violation of the narcotic laws (Indictment Nos. 6809 and 6810), and the deadly weapon statute (Indictment No. 6811).

Arraignment was held in the Criminal Court of Baltimore on September 18, 1973, before Judge Frederick W. Invernizzi and a plea of guilty was entered to the First Count of each Indictment. The Petitioner was then sentenced to the Maryland State Penitentiary for a period of 20 years under each of the first two Indictments and 3 years under the third Indictment. All the sentences were to run concurrently.

On December 16, 1974, the Petitioner filed his first application for relief under the Maryland Uniform Post Conviction Procedure Act. In his application he raised four issues, namely: (1) that he was not properly apprised of his Fifth Amendment rights; (2) that he was not fully apprised of his absolute right to trial by jury; (3) that he was not fully and effectively apprised of his rights to be confronted by his accusers; and (4) that his guilty plea was not made voluntarily. A hearing was held on these allegations in the Criminal Court of Baltimore before the Hon. Meyer M. Cardin on June 6, 1975. After hearing the testimony Judge Cardin issued his Memorandum Opinion and Order on June 16, 1975, denying the Petitioner relief under the Maryland Uniform Post Conviction Procedure Act. The Petitioner made an application to the Maryland Court of Special Appeals for leave to appeal his denial of relief and on July 8, 1975, the Maryland Court of Special Appeals denied the Petitioner's application for leave to appeal.

In September of 1975, the Petitioner filed a Petition for a writ of habeas corpus in the United States District Court for the District of Maryland against the Warden of the Maryland Penitentiary. In his Petition he alleged (a) that he was denied the due process of law because his attorney did not act in the

best interest of the Petitioner; (b) that he was not told of his rights under the Fifth Amendment and Sixth Amendment of the United States Constitution; (c) that his house was illegally searched; and (d) that his guilty plea was made neither voluntarily nor intelligently. Each of these allegations were considered by the District Court and on July 2, 1976, that court found (1) that the Petitioner was fully advised by his attorney as to his rights under the Constitution and that his plea of guilty was entered voluntarily and intelligently; (2) that the Petitioner received competent representation from his trial attorney; (3) that the Petitioner had failed to raise the issue in the state courts as to whether or not his trial attorney informed him of his right to appeal and, as a consequence, had failed to exhaust his state remedies; and (4) that the Petitioner's allegation as to speedy trial had been foreclosed by his plea of guilty as had also his issue of illegal search. The Petitioner appealed the denial by the District Court of his Petition for a writ of habeas corpus to the United States Court of Appeals for the Fourth Circuit and on August 11, 1977, in an unpublished opinion, No. 76-8315, that court denied the appeal and affirmed the decision of the United States District Court for the District of Maryland. On December 17, 1977, the Petitioner filed a Petition for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit with this Honorable Court and, on February 2, 1978, this Honorable Court directed that the Attorney General of the State of Maryland file a response by March 4, 1978, to the Petitioner's Petition for a writ of certiorari.

STATEMENT OF FACTS

At the Petitioner's trial in the Criminal Court of Baltimore on September 18, 1973, before the Hon. Frederick

W. Invernizzi the following took place:

THE CLERK: What are the pleas as to each indictment:

MR. HOWARD: The plea would be guilty and a statement of facts.

MR. BOLLINGER: Your Honor, that is the first count.

MR. HOWARD: The first count. There are three indictments.

THE COURT: Do you want to qualify him?

MR. HOWARD: For the record, Your Honor, I have had extensive conversations with my client regaring these indictments and I have advised him of all of his rights as to a jury trial and a plea of not guilty. I have advised him that on a guilty plea and a statement of facts he is giving up his right to a confrontation of witnesses in order to cross examine them. I have also advised him that he is giving up his right to produce witnesses and other defense motions he would have as to the chain of custody in this case.

For the record, have I stated it correctly, Mr. Proctor?

THE DEFENDANT: Yes.

MR. HOWARD: And, you agree to waive all those rights?

THE COURT: Before the Court can accept the plea of guilty, it must be shown that the plea is voluntary and not through any threats or inducements and with the understanding of the nature of the plea and the possible consequences of the plea. I want to be sure that he is doing it consciously and he is waiving and giving up his rights guaranteed to him by the Maryland and federal laws.

Do you want to tell him about the consequences of the plea?

MR. HOWARD: For the record, a plea of guilty would leave nothing for the Court except to hear the statement of facts and impose the sentence and the maximum is twenty-five years on the first two indictments and the third indictment can be a three year sentence and a thousand dollar fine.

Mr. Proctor has had extensive information and he is fully cognizant of the maximum sentence the Court can impose.

MR. BOLLINGER: So the record is clear, it's twenty years on the first two indictments. I would also, for the record, Your Honor, ask that Mr. Proctor be advised of the fact that the Court is not required to accept any recommendation by the State.

MR. HOWARD: I felt that might be appropriate at this point because there has been no proffer at this point. Mr. Proctor is also aware of the fact that the Court is not bound by any negotiations at all.

MR. BOLLINGER: If Your Honor please, the testimony in this case would be that the State would call Officer Michael Lorden of the Baltimore County Police Department. Officer Lorden is in court today.

State your name for the record.

OFFICER LORDEN: Officer Michael Lorden.

MR. BOLLINGER: Now, Officer Lorden would testify that on October 16, 1970, he was working as an undercover agent and assigned to the Baltimore City Police Department to do undercover work. He would testify that on this particular date in the vicinity of Greenmount and North Avenues in Baltimore City, he was in his automobile in company with two other individuals. He would further testify that after various conversations concerning the purchase of narcotics, he went to a bar in the vicinity of Greenmount Avenue and 20th Street and there he observed a white Oldsmobile car which had a license number, Maryland tag GH 9633. At this time, one of the occupants got out of the car and went over to the white Oldsmobile car and came over to his car and directed him to drive north onto 25th Street and went for two more blocks, at which time he approached the vicinity of Mickey's Bar in Baltimore, Maryland. At this point, the officer's car pulled up behind the same white Oldsmobile car, which I stated before had a license tag of GH 9633. At this point, the officer would testify that an individual got out of the Oldsmobile car and walked back to the officer's car and he would identify this individual as one Maurice Proctor.

At this time, Mr. Proctor handed a bundle, which in narcotics parlance was a group of glassine bags, to the officer. In turn, the officer gave him $75 in U.S. currency.

At this time, Mr. Proctor returned and got back in the Oldsmobile and left the area. Detective Lorden then went back with the two occupants of his car and contacted by radio his superior officer, Sergeant Manzari.

Now, Sergeant Manzari was met on Patterson Park in Baltimore, Maryland. At that point, the white glassine bags and the substance therein were placed in an evidence envelope and signed and sealed by the sergeant, Sergeant Manzari, and by Officer Lorden. Officer Lorden would then testify that on October 17th, the next day, he went to the narcotics section of the Baltimore County Police Department, Evidence Control Unit, and removed the evidence envelope which he signed the night before and took it to the Baltimore County Police Department Crime Lab, where it was examined and -- it was examined by Chemist J. D. Ellis for analysis.

Now, if Your Honor please, I would offer at this time as State's Exhibit 1 as part of the guilty plea, the report of Mr. John D. Ellis on the twenty glassine bags turned over to him by the detective of the Baltimore County Police Department showing that the substance was found to be heroin hydrochloride, a Schedule I Controlled Dangerous Substance.

Now, if Your Honor please, we will also offer as State's Exhibit number 2, and I show the Court a brown evidence envelope signed by Mr. Ellis and Officer Lorden who would testify that these are the packets of heroin which were recovered as a result of a purchase by Detective Lorden from the defendant, Maurice Proctor. You will notice they are sealed and we have problems with them. I will give them back to Detective Lorden.

Now, based on this information, Detective James Dugent, who is also in the courtroom, would testify that on November 9, 1970, armed with an arrest warrant, he was in the 2200 block of Greenmount Avenue when he observed the same Oldsmobile with the license tag and being driven away by the occupant who he would identify as the defendant. At this time, they stopped the automobile and Detective Dugent arrested Mr. Proctor and advised him of his rights and proceeded to take him to Northeastern District. In the process of arresting him, Detective Dugent would testify that he had him place his hands on the car by the door and

immediately within the reach of Mr. Proctor was a .32 calibre weapon loaded with six .32 calibre shells. I would offer as State's Exhibit 3 a .32 calibre weapon that the detective would identify as the weapon he recovered.

Finally, if Your Honor please, the State would offer as State's Exhibit 4, the records from the Department of Motor Vehicles showing that the Oldsmobile car bearing tag number GH 9633 was in fact a vehicle operated in the State of Maryland by Maurice Proctor, at that time living at 2805 Gwynns Falls Parkway in Baltimore, Maryland. We would offer that as State's Exhibit 4.

With all due respect, Your Honor, that would be the State's case in chief.

THE COURT: Let the record show the Court has accepted the plea as being a voluntary plea by the defendant. However, I do want to make it clear that the Court is not bound in any way by any arrangements that counsel for the State and the defendant have made. If I accept this plea, I can sentence the defendant to the maximum punishment in each of the counts of the indictments.

MR. HOWARD: As to the statement of facts, I think they are substantially correct. We have no objections or additions. I understand it is appropriate to offer a defense and that includes anything the defendant would normally make. But, he does not wish to make any defense. He wishes to submit on the statement of facts and to his plea.

THE COURT: On what I have heard, I will enter a finding of guilty as to the three indictments to which reference was made. Now, as to disposition, gentlemen --

MR. HOWARD: We are prepared to submit. Your Honor, I would again urge the Court to consider the State's recommendation even though Your Honor has heard just a small part of what was involved in the agreed statement of facts. Your Honor, in our negotiations with the State, the State has agreed to recommend that the defendant be sentenced to a period of incarceration for twenty years. In addition to this, the State would stet outstanding cases against the defendant, which are narcotics cases in general. One of these is a conspiracy case.

MR. BOLLINGER: If Your Honor please, there are outstanding cases against Mr. Proctor at this time that have not been tried. At this time, they are in the system. I will stet the outstanding cases on this defendant in accordance with the negotiations and in addition I will nolle pros one case against his wife which charges a violation of narcotic laws and that would be the extend of the plea bargaining in this case.

THE COURT: Anything else?

MR. HOWARD: No.

THE COURT: Is the defendant ready to be sentenced?

MR. HOWARD: Yes.

THE COURT: In view of the circumstances outlined by the State's Attorney, I am going to accept the recommendation by the State and I hereby sentence you, Mr. Proctor, to twenty years to the custody of the Department of Correction on the first count of the indictment and a concurrent sentence as to the remaining counts of the indictment.

The Petitioner in his testimony in the Criminal Court of Baltimore in which he was seeking relief under the Maryland Post Conviction Procedure Act, testified on June 6, 1975, commencing on page 16 of the trial transcript as follows:

CROSS EXAMINATION

BY M'S. SALSBURY:

Q. Mr. Proctor, you stated on direct examination that you knew you had a right to testify for yourself?

A. I know I had a right for myself.

Q. You knew you had a right to take the stand in your own defense?

A. Yes.

Q. And you also knew at that time that you had a right not to take the stand; that you didn't have to take the stand if you didn't want to; is that right?

A. Yes.

Q. And you also knew at that time that you had a right not to take the stand; that you didn't have to take the stand if you didn't want to; is that right?

A. Yes.

Q. You also knew at the time of trial that the maximum amount of time that you could receive for those three years was forty-five years; is that right?

MR. MENTZER: Objection, Your Honor.

THE COURT: Well, under the negotiations he was advised in the records you introduced.

THE PETITIONER: I was told that I could get a hundred and some years.

THE COURT: In these three cases the maximum time would be how much?

M'S SALSBURY: Excuse me, forty-three years.

THE PETITIONER: I believe if I got the maximum it would have been twenty, twenty plus three.

The Petitioner also testified at the time of trial that he had completed the 10th grade of school. During the same post conviction hearing, the Petitioner's counsel, commencing at page 25 of the transcript and ending at page 28, testified as follows:

BY M'S SALSBURY:

Q. Mr. Howard, prior to you entering -- Mr. Proctor entering a plea of guilty, did you familiarize yourself thoroughly with the facts in the case, and in your discussions with Mr. Proctor did you discuss the case and the amount of evidence that could be presented against him?

A. In more detail than Mr. Proctor even admitted.

Q. Could you tell this Court, if you recall, what, if anything you told Mr. Proctor in those cases?

A. I am not sure that I am at liberty to tell him all of this, some of it may be confidential.

THE COURT: The only thing the Court would like to know is did you advise him of his constitutional rights?

THE WITNESS: Yes, sir.

THE COURT: Did you advise him of what the plea negotiations were that were worked out with the State?

THE WITNESS: No question, Your Honor.

THE COURT: What were the plea negotiations?

THE WITNESS: Just exactly what happened, they dropped all the charges other than the one indictment against him, and the several charges against his wife, Mrs. Belinda Proctor were dropped.

THE COURT: They called all of the cases against his wife and all others except those present here and that they would recommend to the Court twenty years.

BY M'S SALSBURY:

Q. Is that what in fact happened?

A. Yes.

Q. Mr. Howard, at the time of the trial did you, for the record, advise him of his constitutional rights that he was waiving by entering the plea of guilty?

A. Prior to trial at the trial table.

Q. And on the record as well?

A. The record is not replete with all we talked about. We discussed the jury trial for the other cases, which were stetted even before these. I think at one time, if Your Honor please, Mr. Proctor had seven or eight different kinds of cases pending against him, some were stetted, nol prosed and disposed of at the stationhouse level. I have known Mr. Proctor I guess for about five or six or seven years.

THE PETITIONER: Four, Charlie.

THE WITNESS: He says four.

BY M'S. SALSBURY:

Q. Did you at any time at the trial table or after or before advise Mr. Proctor that he had a right to remain silent and didn't have to say anything that could be used against him?

A. Yes.

Q. Did you tell him he had a right to take the witness stand if he chose to take the witness stand in his own defense?

A. Yes, at the trial table, not on the record.

Q. Was it your impression that Mr. Proctor understood his rights?

A. No question about it.

Q. Was it your impression that he understood all the other rights that you discussed with him on and off the record?

A. Yes.

M'S SALSBURY: I have no further questions.

ARGUMENT

I.

THE PETITIONER'S PLEA OF GUILTY WAS GIVEN FREELY, VOLUNTARILY AND INTELLIGENTLY.

When considering whether or not the Petitioner's pleas of guilty were voluntarily, intelligently and knowingly made, it is necessary that the decision of this court in Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969), be considered. Boykin mandated no express rule of procedure but mandated that the guilty plea must be made voluntarily, must be made after proper advice, and must be made with the full understanding of the consequences.

The trial transcript of this case reveals that the Petitioner's attorney had extensive conversations with the Petitioner regarding the offenses for which he then stood

charged. His counsel had advised him of all his rights as to a jury trial and to his right to plead not guilty. He had been further advised that on a guilty plea he was giving up his right to confrontation of witnesses against him and the right to produce witnesses and other defense motions in his behalf. The Petitioner acknowledged that he had beer advised of all those rights and that he agreed to waive all those rights. Additionally, at the trial, there was presented a statement of facts and in that statement the expected testimony of the witnesses against the Petitioner was presented to the court revealing that there was strong evidence against the Petitioner that he had sold a bundle of glassine bags to an undercover agent and that the 20 glassine bags contained a controlled dangerous substance known as heroin hydrochloride. There was also the expected testimony by a police officer that when the Petitioner was arrested at a subsequent date there was found in his possession a loaded .32 calibre pistol.

During the course of the trial, the Petitioner was advised of the maximum sentence which he could receive for the offenses of which he was charged. The Petitioner did not desire to make any defense and wished to submit on the statement of facts. Likewise, testimony reveals that only a small part of what was involved in the agreed statement of facts was presented to the court and that the State had agreed to recommend that the Petitioner be incarcerated for a period of 20 years and would stet the outstanding cases against the Defendant which were narcotic cases in general, one of which was a conspiracy case. It was also revealed that the State would not only stet the

outstanding cases against the Petitioner other than the three for which he was being tried, but also negotiated to nol-pros the cases against the Petitioner's wife which were violations of the narcotic law. All this resulted from plea bargaining. The recommendations by the State were adopted and the Petitioner was sentenced to 20 years in the custody of the Department of Corrections on the First Counts of the indictment.

During his post conviction hearing the Petitioner testified that he knew he had a right to testify for himself; that he knew he had a right to take the stand in his own defense; that he knew he had a right not to take the witness stand; that he did not have to take the stand as a witness unless he wanted to; and that he knew at the time of trial that the maximum amount of time which he could receive for the three offenses was 45 years as a result of the negotiations, but that he could receive up to 100 and some years as a result of the offenses which were outstanding against him. During the post conviction hearing the Petitioner's trial counsel revealed that he had discussed the case and the amount of evidence which could be presented against the Petitioner; of the plea negotiations which had been worked out with the State, i.e., that the State would drop all the charges other than the one indictment against him and also drop the several charges against his wife, and would recommend to the court a sentence of 20 years. It was also revealed at the post conviction hearing that the Petitioner at the time of his trial had 7 or 8 different cases pending against him. Some were stetted, some were nol-prossed, and some were disposed of at the stationhouse level.

The facts reveal that the Petitioner prior to entering his plea understood the nature of his constitutional protections that he was waiving. He understood the nature of the charges against him and he also understood that by his plea of guilty to the offenses upon which he was then being tried that the State would either stet or nol pros the remaining cases against him and the criminal charges against his wife. The statement of facts presented to the court provided a trustworthy basis for believing that the Petitioner was in fact guilty. He entered his plea knowing the offenses upon which he was being tried. This court in North Carolina v. Alford, 400 U.S. 25, 37, 91 S.Ct. 160, 167, 27 L.Ed.2d 162, 171, stated:

> "Thus, while most pleas of guilty consist of both a waiver of trial and an expressed admission of guilt, the latter element is not a constitutional requisite to the imposition of criminal penalty. An individual accused of a crime may voluntarily, knowingly and understandingly consent to the imposition of a prison sentence even if he is unwilling or unable to admit his participation in the acts constituting the crime.
>
> Nor can we perceive any material difference between a plea that refuses to admit commission of the criminal act and a plea containing a protestation of innocence when, as in the instant case, a defendant intelligently concludes that his interest requires entry of a guilty plea and the record before the judge contains strong evidence of actual guilt."

In this case the Petitioner voluntarily made his plea of guilty to the offenses after being properly advised and with the full understanding of the sentence which he was to receive. He made his plea in order that the other charges against him would be dismissed, either stetted or nol-prossed, and that the charges against his wife would also be dismissed. He intelligently concluded that his interest required the

entry of a guilty plea and the statement of facts presented to the court which the trial transcript reveals was only a partial statement of the facts, contains strong evidence of the actual guilt of the Petitioner. He should not at this late date be permitted to argue that he was innocent of the offenses for which he was tried or that his plea of guilty was either involuntarily, unintelligently or made without understanding the consequences of his act.

II.

THE PETITIONER'S COUNSEL WAS COMPETENT AND EFFECTIVE.

The Petitioner claims that his counsel was ineffective and incompetent because he failed to properly investigate and prepare the Petitioner's case. In support of this contention the Petitioner claims that the search was bad because of lack of probable cause to arrest him because no warrant for the arrest was filed by the cadet agent and the reliability of the informer was questionable. The Petitioner also claims that his defense counsel failed to file the necessary pretrial and post-trial motions pertaining to speedy trial, suppression, dismissal and appeal, that his trial counsel improperly advised him to plead guilty and did not advise him of his right to a jury trial, and the Defendant could remain silent.

The facts of the case reveal that the Petitioner's trial attorney had thoroughly familarized himself with the facts of the Petitioner's case and had discussed these facts with the Petitioner. The Petitioner's trial defense counsel was able to have all the charges except the three to which the Petitioner plead guilty dropped by the State, as well as the charges against the Petitioner's wife. The facts reveal that the Petitioner was fully apprised of the meaning

of his plea of guilty, he was advised as to his right to a jury trial, of his right to plead not guilty, that he was giving up his right to confront witnesses against him, that he was giving up his right to produce witnesses and defense motions, and that in consideration of his plea all the other charges against him would be either stetted or nol-prossed, and that the State would recommend that the maximum sentence which he was to receive would be 20 years confinement. The Petitioner's defense counsel's representation of the Petitioner was well within the range of competence demanded of attorneys in criminal cases. As this court stated in McMann v. Richardson, 397 U.S. 768, 90 S.Ct. 1441 at 397 U.S. 770-771 (1970):

> "A court should not measure the competency of counsel's advise by retrospectively considering whether it was right or wrong. The proper test is whether counsel's advice was 'within the range of competency demanded of attorneys in criminal cases'."

It is submitted that the Petitioner's defense counsel's representation in light of his ability to have innumerable charges against the Petitioner either nol-prossed or stetted, charges against his wife dropped and limiting the Petitioner's sentence to 20 years, fully met the standard required of defense counsels representing accused. The Petitioner's defense counsel's representation was well within the range of competency demanded of attorneys in criminal cases.

ADDITIONAL ALLEGATIONS MADE BY PETITIONER

The Petitioner also raises an allegation that his home was illegally searched by a defective search warrant, that the prosecution engaged in malicious misconduct, and that the

Petitioner was denied a complete and fair evidentiary hearing in the court below. This court stated in Tollett v. Henderson, 411 U.S. 266, 267, 93 S.Ct. 1602 (1975):

> "We thus reaffirmed the principle recognized in the Brady trilogy; a guilty plea represents a break in the chain of events which has proceeded it in the criminal process. When a criminal defendent has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea. He may only attack the voluntary and intelligent character of the guilty plea by showing that the advice he received from counsel was not within the standards set forth in McMann." McMann v. Richardson, 397 U.S. 768; 90 S.Ct. 1441 (1970).

Once the Petitioner has plead guilty to the offenses for which he was tried, motions for speedy trial, suppression of the evidence as the result of an illegal search either without a warrant or by effectively defective search warrant are waived.

Allegations which have not been previously made and heard in state courts should not be entertained in a habeas corpus proceeding until the Petitioner has exhausted his state remedies.

In Townsend v. Sain, 372 U.S. 293, 83 S.Ct. 745, 9 L.Ed.2d 770 (1963), this court stated at 372 U.S. 313:

> We hold that a federal court must grant an evidentiary hearing to a habeas applicant under the following circumstances: if (1) the merits of the factual dispute were not resolved in the state hearings; (2) the state factual determination is not fairly supported by the record as a whole; (3) the factfinding procedure employed by the state court was not adequate to afford a full and fair hearing; (4) there is a substantial allegation of newly discovered evidence; (5) the material facts were not adequately developed at the state court hearings; or (6) for any reason it appears that the state trier-of-fact did not afford the habeas applicant a full and fair hearing."

The District Court found that the Petitioner had received a hearing within the state court which complied with the enumerated requirements above. The record fully sustains this finding.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this Petition for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit should be denied.

Respectfully submitted,

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